

### §211.3

defense or otherwise significantly improve the military security of that country.

(c) The policy set forth in this part also applies to Military Assistance Program (MAP) expenditures in all countries.

### §211.3 Definitions.

(a) Regardless of how a charge is denominated in foreign law or regulation, the words “tax” and “taxes” include all direct or indirect foreign customs duties, import and export taxes, excises, fees and other charges imposed at the national, local or intermediate level of a foreign country other than charges for services rendered or for other consideration received.

(b) For example, taxes include but are not limited to purchase tax, sales tax, use tax, gross receipts tax, stamp tax, transfer tax, transaction tax, turnover tax, value added tax, service tax, trade tax, business tax, license tax, transportation tax, circulation tax, luxury tax, possession tax, production tax, registration tax, consumption tax, gasoline tax, real property tax, personal property tax, and gross income tax.

(c) The word “relief” includes any method, technique, or procedure by which the ultimate economic burden of a tax on DoD funds may be avoided or otherwise remedied, such as exemption, refund, or drawback.

### §211.4 Policy.

It is the policy of the Department of Defense to secure, to the maximum extent practicable, effective relief from all foreign taxes wherever the ultimate economic burden of those taxes would, in the absence of such relief, be borne by funds appropriated or allocated to the Department of Defense (including MAP appropriations) or under the control of its nonappropriated fund activities. In those cases in which the total economic burden of a tax not readily identifiable in the normal course of business is so small that it may be considered a *de minimis* matter, or in which the administrative burden of securing effective relief from a tax in a particular instance would be out of proportion to the amount of the relief ob-

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tained, tax relief shall be considered impracticable.

### §211.5 Responsibilities.

(a) The *General Counsel of the Department of Defense* shall:

(1) Provide overall supervision and direction of the DoD Foreign Tax Relief Program.

(2) Resolve any significant issues relating to the program.

(3) Designate those countries that come within §211.2(b)(2)(ii) of this part.

(4) Direct the preparation of country tax law studies for countries not within the scope of §211.2(b) of this part.

(5) Designate the DoD member of the Inter-Agency Committee on Foreign Tax Relief, established by the Department of State.

(b) The *Assistant Secretary of Defense (International Security Affairs)* shall monitor the negotiation and conclusion of international agreements subject to the Secretary’s approval authority under DoD Instruction 2050.1 Delegated Approval Authority to Negotiate and Conclude International Agreements, July 6, 1977,<sup>1</sup> to ensure that such agreements are compatible with the policy set forth in this part and any implementing guidance concerning that policy issued by the General Counsel of the Department of Defense.

(c) The *Chairman, Defense Acquisition Regulatory Council*, shall coordinate with the General Counsel of the Department of Defense before the issuance, amendment, or revision of any portion of the Defense Acquisition Regulatory System (or regulation, directive, circular, or other publication within the scope of 32 CFR part 160 that pertains to the implementation of the DoD Foreign Tax Relief Program.

(d) The *Assistant Secretary of Defense (Comptroller)* shall perform such fiscal functions as may be required to implement the DoD Foreign Tax Relief Program, including advice and assistance in the institution of procedures for collecting data, compiling reports, and performing internal audits.

(e) The *Secretary of each of the Military Departments* and the *Director of each of the Defense Agencies* shall issue

<sup>1</sup>See footnote 1 to §209.5(d).

instructions or regulations that charge a single office within the respective Military Department of Defense Agency (referred to as the "Cognizant Office") with continuing responsibility for supervising and monitoring the implementation of the DoD Foreign Tax Relief Program within such Department or Agency. Such instructions or regulations shall delegate to the Cognizant Office authority commensurate with its responsibility.

(f) *Commanders of Unified Commands*, as appropriate, shall promulgate management procedures to guide and coordinate the administration of the DoD Foreign Tax Relief Program throughout their respective area commands.

(g) For each foreign country that comes within the scope of subsection B.2. of this directive, a single Military Commander shall be designated by the Commander of the Unified Command. The designated Military Commander shall be the same designated under the procedures in 32 CFR 151.3(c). The designated Military Commander shall:

(1) Make and maintain a current country tax law study in accordance with §211.6 of this part.

(2) Be the single point of contact for U.S. contracting officers and activities for the investigation and resolution of specific matters that relate to the foreign tax relief program within the country for which the Military Commander is designated and for the forwarding of major problems affecting that program through proper channels to the General Counsel of the Department of Defense.

(3) Provide liaison with the responsible U.S. diplomatic mission on current tax relief problems and, where appropriate, with local foreign tax authorities.

#### §211.6 Country tax law studies.

(a) The taxes covered by each country tax law study shall be limited to those which in the absence of tax relief, would affect, or would appear to affect, U.S. Government expenditures, even as a *de minimis* matter. (All such taxes are hereafter referred to as "applicable taxes.") The formats of the studies for all countries shall be similar within each Unified Command insofar as practicable, and designed to fa-

cilitate statistical reporting procedures. The studies shall be prepared and maintained with a view to the practical utilization of the studies by U.S. contracting officers and activities for purposes of making reliable estimates of the total amount of taxes applicable to any particular contract and the amount thereof for which tax relief is available.

(b) Each country tax law study shall consist of the following:

(1) A general survey of all applicable taxes, together with translations, as appropriate, of the salient features of the law or regulations imposing those taxes.

(2) For each applicable tax, a summary statement containing: Its name; its rate (or rates); the taxing authority (national, provincial, or municipal); the legal incidence of the tax (the nature of the taxpayer or other entity liable for the payment of the tax to the taxing authority under the law of the country); its description (including the base or bases on which the tax is imposed); the applicability of the tax to various types of contracts (supplies, services, or construction) in the event the tax is applicable to only one or several of such types of contracts; the applicability of the tax to the prime contract, as well as to any subcontracts or purchase orders issued by the prime contractor or subcontractor; the applicability of the tax to contractor and subcontractor personnel; the variation, if any, of the applicability of the tax depending upon the domicile of the contractor or contractor personnel, such as United States, host country, or third country; any applicable exemptions or deductions of significance; and the method of collection of the tax.

(3) The basis upon which it is concluded that each applicable tax, in absence of tax relief, would affect, or would appear to affect, U.S. Government expenditures; and any evidence of the degree to which its ultimate economic burden would, in absence of tax relief, be borne by the U.S. Government rather than be absorbed by others.

(4) The substantive tax relief, if any, from each applicable tax that is available to the U.S. Government either by international agreements in force or